

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ELWOOD H. JONES, JR.,

:

Petitioner, : Case No. 1:01-cv-564

-vs- : District Judge Thomas M. Rose

MARGARET BAGLEY, Warden, : Chief Magistrate Judge Michael R. Merz

:

Respondent.

DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR DISCOVERY

This capital habeas corpus case is before the Court on Respondent's Motion for Appropriate Relief (Doc. No. 94) which seeks discovery of those portions of the files of Petitioner's trial and appellate counsel which relate to the claims of ineffective assistance of those counsel on which the Court has granted an evidentiary hearing. Because the Court has granted an evidentiary hearing on certain claims of ineffective assistance of counsel, good cause exists for the discovery within the meaning of Habeas Rule 6 as interpreted in *Bracy v. Gramley*, 520 U.S. 899 (1997), and *Harris v. Nelson*, 394 U.S. 286 (1969).

The Magistrate Judge was advised in the Motion that Petitioners had unspecified objections to producing the files in question (Motion, Doc. No. 94, at 1), and accordingly ordered that any response by Petitioner to the Motion was to include whatever objections Petitioner had (aside from good cause, which had already been found) and, if the objections were

based on any asserted privilege, Petitioner's counsel shall produce, not later than the date on which the memorandum in opposition is filed, a privilege log which provides enough to detail to permit adjudication of the claim and shall also produce the documents withheld under claim of privilege for *in camera* inspection by the Court.

(Order Regarding Respondent's Motion for Discovery, Doc. No. 95, at 2.) No such privilege claim has been made, either in the Memorandum in Opposition or by way of a privilege log and the documents in question have not been produced for *in camera* inspection. Respondent has adequately dealt with Petitioner's timeliness objection in her Reply.

Petitioner's counsel are ordered to produce the requested documents to Respondent's counsel for inspection and copying not later than June 1, 2007.

May 5, 2007.

s/ **Michael R. Merz**
Chief United States Magistrate Judge